

PURPOSE

To establish authorization requirements and instructions for uses and disclosures other than for treatment, payment, and health care operations or other exceptions under the Michigan Department of Health and Human Services' (MDHHS) policies.

REVISION HISTORY

Issued: April 14, 2003

Revised: September 16, 2013. This policy and procedure rescinds and replaces previous versions of 06.8.D.1 PHI Use and Disclosure - Authorizations Policy and 06.8.D.2 PHI Use and Disclosure - Authorizations Procedure.

POLICY

MDHHS covered components cannot use or disclose protected health information, for purposes other than treatment, payment and health care operations, without a valid written authorization from the individual, except as otherwise permitted by these policies or as required by law. When MDHHS obtains or receives a valid authorization for its use or disclosure of protected health information, such use or disclosure must be consistent with the authorization. Information released pursuant to this authorization may include alcohol and/or drug abuse records protected under federal and/or local law. Information may also include behavioral or mental health services, or information relating to sexually transmitted disease, Human Immunodeficiency Virus (HIV), and any other communicable diseases.

Special Consideration for Psychotherapy Notes

An authorization is required for any use or disclosure of psychotherapy notes with some exceptions; see authorization procedure for guidance.

Special Consideration for Marketing Purposes

An authorization is required for marketing purposes with some exceptions; see authorization procedure for guidance.

Special Consideration for Sale of PHI

An authorization is required for any remuneration MDHHS receives in exchange for PHI.

Special Consideration for Compound Authorizations

Compound authorizations can only be accepted when:

- Combined with any other type of written permission for the same or another research study.
- For psychotherapy notes combined with another authorization for psychotherapy notes.
- There are no conditions stated for the provision of treatment, payment, enrollment in a health plan, or eligibility for benefits.

Revocation of Authorizations

Individuals may revoke an authorization at any time provided the revocation is in writing. MDHHS will permit the revocation to the extent that reliance on the authorization may have already occurred.

**Note: Some applicable privacy or confidentiality laws are more restrictive than HIPAA. The law that provides the individual with greater privacy protection or rights must be complied with. (Examples of state and federal laws that require additional confidentiality protections are: Medicaid, Substance Abuse, Public Health Code, HIV/AIDS/STDs, and Mental Health Code). When in doubt, contact the Bureau of Legal Affairs.*

PROCEDURE**Review of requests for PHI:**

Determine if an authorization is required; see Permitted and Required Disclosures policy and procedure. If a request for PHI does not fall into one of the purposes that do not require an authorization from the Permitted and Required Disclosures policy and procedure, then a valid written authorization must be received.

Review Authorization for HIPAA Compliance

Determine that the authorization is HIPAA compliant.

MDHHS accepts as a valid authorization any form (document) written in plain language and containing all of the following:

- A description of the information to be used or disclosed.

- The name of the specific person or entity authorized to use or disclose the protected health information.
- The name of the specific person or entity to whom MDHHS may make the requested use or disclosure.
- A statement of the purpose of the use or disclosure. If the authorization is initiated by the individual the statement "At the request of the individual" is adequate.
- An expiration date.
- A statement of the individual's right to revoke the authorization in writing with a description of how the individual may revoke the authorization.
- A statement that information used or disclosed may be subject to re-disclosure by the recipient and is no longer protected.
- A statement that MDHHS will not condition treatment, payment, enrollment in the health plan, or eligibility for benefits on the individual's providing authorization unless the information is necessary to demonstrate that the individual meets eligibility or enrollment criteria.
- Signature of the individual and date or if signed by a personal representative, a description of such representative's authority to act for the individual (CFR 164.508).

See MDHHS-1183 Authorization to Disclose Protected Health Information, and/or MDHHS-1428 HIPAA Authorization Checklist.

MDHHS will not accept as valid an authorization that:

- Has not been filled out completely in regard to items above.
- Contains material information known to be false.
- Is known to have been revoked.
- The expiration date or event has passed.
- Violates requirements concerning compound authorizations or the conditioning of authorizations.

Special Considerations

Special Consideration for Psychotherapy Notes

An authorization is required for any use or disclosure of psychotherapy notes with the exception of these uses:

- Use by the originator of the psychotherapy notes for treatment.
- Use or disclosure by MDHHS in training programs for students, trainees or practitioners in mental health.
- Use or disclosure by MDHHS to defend a legal action etc. brought by the individual.
- Use or disclosure by MDHHS to oversee originator of psychotherapy notes as required or permitted by the Privacy Rule.

Special Consideration for Marketing Purposes

An authorization is required for marketing purposes unless the communication is either of the following:

- A face-to-face communication made by a covered component of MDHHS to the individual.
- A promotional gift of nominal value provided by a covered component of MDHHS.
- To provide refill reminders or otherwise communicate about a drug or biologic that is currently being prescribed for the individual, only if any financial remuneration received by a covered component of MDHHS in exchange for making the communication is reasonably related to the covered component's cost of making the communication.
- For the following treatment and health care operations purposes, except where MDHHS receives financial remuneration in exchange for making the communication:
 - For the treatment of an individual by a health care provider, including case management or care coordination for the individual, or to direct or recommend alternative treatments, therapies, health care providers, or settings of care to the individual.
 - To describe a health-related product or service (or payment for such product or service) that is provided by, or included in a plan of benefits of, the MDHHS covered component making the communication, including communications about: the entities participating in a health care provider network or health plan network; replacement of, or enhancements to, a health plan; and health- related

products or services available only to a health plan enrollee that add value to, but are not part of, a plan of benefits.

- For case management or care coordination, contacting of individuals with information about treatment alternatives, and related functions to the extent these activities do not fall within the definition of treatment.

If the marketing involves financial remuneration to a covered component of MDHHS from a third party then the authorization must state that such remuneration is involved.

Special Consideration for Sale of PHI

An authorization is required for any remuneration MDHHS receives in exchange for PHI.

Special Consideration for Compound Authorizations **Compound authorizations can only be accepted in limited circumstances:**

- Research: an authorization for research purposes may be combined with an authorization for the same or another research study, with an authorization for the creation or maintenance of a research database or repository, or with a consent to participate in research.
- Psychotherapy Notes: an authorization for psychotherapy notes may only be combined with another authorization for psychotherapy notes.

Note: There can be no conditions stated for the provision of treatment, payment, enrollment in a health plan, or eligibility for benefits.

Revocation of Authorizations

Individuals may revoke an authorization at any time provided the revocation is in writing. MDHHS will permit the revocation to the extent that reliance on the authorization may have already occurred.

Individual Copy

MDHHS will provide the individual with a copy of the signed authorization upon request.

Document and Retain

MDHHS will document and retain authorizations and revocations for six years from the last date it was in effect.

REFERENCES

45 CFR §164.508, §164.510, §164.512, §164.530, 45 CFR §164.501, §164.508(a), §164.508(b),

§164.508(c), §164.508(d), §164.508(e), §164.508(f), §164.530(j), MDHHS-1183, MDHHS-1428.

APL-680, Policies and Procedures Definition Glossary, APL-68C-1 PHI Written Authorization.

CONTACT

For additional information concerning this policy, contact the MDHHS Bureau of Legal Affairs.